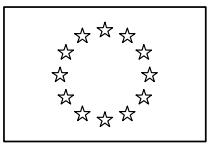

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REPORT FROM THE COMMISSION

FIRST ANNUAL REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

ON THIRD COUNTRY ANTI-DUMPING, ANTI-SUBSIDY AND SAFEGUARD ACTION AGAINST THE COMMUNITY (2003)

PART I: INTRODUCTION

Overall trends

The year 2003 has confirmed the increasing trend in the number of trade defence cases being opened against Community exporters. The number of definitive measures in force against the Community has increased from 169 at the end of 2002 to 192 at the end of 2003. Although this increase can partly be attributed to the growing number of countervailing duty cases targeting the Common Agricultural Policy (CAP), the major part is due to the fact that some countries are opening cases, which are clearly below World Trade Organization (WTO) standards and which never should have been opened in the first place.

The number of measures could also rise in the coming years, mainly due to uncertainties surrounding China's future use of trade defence. Until present, China has made relatively little use of trade defence, and only 4 EU products were in 2003 subject to measures. The strong pressure exerted by the EC in every case opened by China on EU exporters may have influenced this low count.

The US is another country constantly monitored by the EC. The US is the WTO member whose measures are most frequently challenged in the WTO dispute settlement system. This would seem to reveal a certain incompatibility between US practice on Trade Defence Instruments (TDI) and the rules of the WTO. This discrepancy is highlighted by the US reluctance to accept the rulings of the WTO panels and in fact even to implement them (e.g. 1916 Anti-Dumping act and the Byrd Amendment).

In terms of statistics, the US had in 2003, as in the previous year, the largest number of measures in force (53) against the Community, followed by India (32), Brazil (12), South Africa (11) and Canada (10). As for the number of investigations against the Community, which were underway at the end of 2003, India had the largest number (7), followed by the US (5), China (4), Ecuador (4), Ukraine (4) and Venezuela (4).

In spite of the significant number of measures in force against Community exporters, there is some ground for optimism for the coming year(s). On the multinational front, the EC is encouraging discussions in the context of the Doha Development Agenda to introduce higher standards in AD and CVD investigations.

On a bilateral level, the EC is setting up TDI ad hoc expert groups with a number of trade partners (India, China and Korea). These groups offer an opportunity to exchange information and views, outside the existing formal framework, on better ways of carrying out investigations and applying TDI rules.

In addition, the Directorate General for Trade (DG Trade) is frequently solicited by third countries to organise training for their officials on EC TDI practice. EC practice is increasingly viewed by third countries as a "model to emulate" ("Vorbildsfunktion"), due to the high standards applied in trade defence matters. Since 2001, seminars have so far taken place in Thailand, Indonesia, Ukraine, China, Russia, India, Pakistan and Romania, just to mention a few. This exercise allows DG

Trade to "coach" third-country officials in order to improve their investigative methods.

PART II: GENERAL ISSUES WITH THIRD COUNTRIES

1. Typical shortcomings

Although there are variations from country to country, some problems are common to many third country cases. On a procedural level, the standard for initiating an investigation is often low. Some countries seem to require very little evidence for the complainant *prima facie* to prove the case. As to the substance, the most common deficiency noted is the lack of in-depth analysis of injury and causality. In particular, "other factors", which sometimes clearly are causing more injury than imports, are often neglected. As a result, the measures imposed are frequently disproportionate to the injury allegedly suffered by the domestic industry.

An increasing number of countries, mainly developing and "transition" countries, are becoming active users of trade defence instruments. This development is especially noticeable in the area of safeguards, which some countries seem to be using rather as routine measures of protectionism instead of an "emergency valve". The Community has consistently raised the problem of the excessive use of safeguards within the WTO, and has strongly advocated the need to apply very high standards for the use of safeguards to preserve the exceptional nature of this instrument.

There is equally a recurring problem of insufficient disclosure of information by some countries when using TDI. Naturally, lack of information can make it very difficult to evaluate on what grounds an investigation has been opened. The problem of insufficient disclosure is the more serious when it comes to justifying the imposition of measures or the rejection of evidence submitted by Community exporters.

Paradoxically, some third countries do not ensure to a sufficient extent that sensitive information does not reach other interested parties. EC exporters have reported that confidentiality rules are not always respected by the investigating authorities in some third countries and that this strongly discourages them from co-operating in the proceedings, especially in AD investigations, where parties are required to submit information of a very confidential nature.

2. Countervailing of agricultural exports

Special mention should be made of the constant increase of the number of CVD actions targeting EU exports of processed agricultural products or food preparations. In 2003, these cases concerned primarily EU exports of olive oil, processed fruits and vegetables, and derivatives of cereals. Third countries usually allege that these exports automatically benefit from EU agricultural subsidies, although EU subsidies are granted to the farmers and not the exporters of the products concerned.

The EC has strongly argued that third countries cannot simply assume that aid granted to the farmers "passes through", directly and in full, to the unrelated processors/exporters. The EC has insisted that any decision to impose a

countervailing duty must be based on a full demonstration that the exported goods have clearly benefited from such aid.

This is a matter of high priority for the EC in terms of general policy, not least because the EC has in the last years, most recently in 2003 engaged in wide ranging reforms of the CAP, which will reshape the nature of the support granted. As a result, an increasing amount of aid will shift from production support to "decoupled" forms of aid (single-farm payment) with no link whatsoever with production and no trade-distorting effect.

Clearly, the Commission will have a role in ensuring that any such changes are properly taken into account by countries applying the CVD instrument. The requirement to demonstrate the existence of "pass through" should make it a lot more difficult for third countries to countervail the aid schemes concerned.

PART III: ACTIONS BY COUNTRY

1. UNITED STATES

At the end of 2003, the US had a total of 53 trade defence measures in force against imports from the Community. The majority of the measures take the form of AD duties (36), while 17 are countervailing measures. During the year 2003, 5 new AD investigations were opened, while no new measures were imposed. Also in 2003, the US terminated its three outstanding safeguard measures (*Line pipe, Wire rod and Steel*). Steel remains the main target of US TDI activity, followed by chemicals and agriculture.

The United States continues to put forward its specific interpretation of the relevant WTO agreements, an interpretation that often leaves room for challenge as demonstrated by the significant number of panels the US has lost in cases involving all three types of commercial defence instruments in the past two years. The major events in 2003 relate to measures subject to WTO dispute settlement proceedings and, in particular, the termination of the US safeguard action on steel[1]. This measure, which disrupted all international steel markets, was successfully challenged by the EU and 7 other WTO members. On 10 November 2003, the Appellate Body (AB) found that the US safeguard action was in breach of the WTO Agreement on Safeguards on several counts. Further to this ruling, the US decided to terminate the measures without any delay.

As briefly mentioned, there are still a number of US practices which raise questions as to their compatibility with international rules and on which the EC has concentrated substantial efforts in 2003. This is the case in the practice known as "zeroing", which fails to give credit for non-dumped transactions in circumstances not permitted by the WTO Anti-Dumping Agreement (ADA). Other aspects of the US trade practice, which were closely followed by the EC were the Byrd Amendment and the US "*sunset reviews*" methodology.

[1] A multiple action involving more than 10 products and hundreds of custom codes.

2. INDIA

At the end of 2003, India had a total of 32 trade defence measures in force against imports from the Community. The vast majority of these measures take the form of AD duties (29), while 3 are safeguard measures. This is a significant increase compared to 2002, where India had 26 measures in force, and to 2001 where there were only 19.

In 2003, India opened 7 new AD investigations and imposed 8 measures. This compares to 11 initiations and 9 measures imposed in 2002. As regards the sectors most affected in 2003, the chemical industry remains the main target, followed by the pharmaceutical sector.

India has, in recent years, sharply increased its use of trade defence measures and is now the world's largest user of the AD instrument. It has since 2001 overtaken the United States in terms of initiations of AD cases. As an illustration, India initiated on a world wide basis 80 new investigations in 2002 (as compared to 35 by the United States and 20 by the EC).

India's growing use of AD appears difficult to justify given the high level of protection already afforded to Indian domestic producers. The still high import protection sometimes seems to have the perverse effect of forcing foreign companies to dump in order to enter the market, with the result of exposing them to AD actions.

EU exporters to India over the last few years have expressed growing dissatisfaction with this situation. They feel that their access to the Indian market is being unfairly jeopardised by an abusive use of the AD instrument, and that they are not always given "due process" in the Indian investigations.

Dispute settlement consultations for Indian cases

In the last 3 years, the Commission has made repeated attempts, both through direct interventions in the Indian proceedings and at political level, to bring the Indian authorities to align their investigations on WTO standards.

It is the Commission's view that the majority of the Indian AD measures raise serious questions as to their compatibility with WTO rules both on procedural and substantive grounds. In many cases, the injury analysis appears to be superficial with little or no disclosure of information, which would permit an objective evaluation of the injury allegedly suffered by the domestic industry and with only a perfunctory attempt to link the alleged injury to imports.

In view of the lack of improvement, the Commission on 8 December 2003 took the decision, in agreement with Member States, to request DSU consultations with India on 27 of its AD measures.

Several discussions have since then been held with the Indian authorities as to how to resolve the dispute.

3. RUSSIA AND UKRAINE

In terms of TDI, Russia and Ukraine have so far limited themselves to safeguard actions. 2003 has been relatively quiet, since only one measure was imposed. This brings Russia to a total of 4 measures and Ukraine to a total of 1. In terms of initiations, Russia opened only one new investigation in 2003 (dry yeast) which compares favourably with 2002, where Russia opened no fewer than 8 investigations. A number of these investigations were terminated in 2003 without any measures imposed.

The decrease in the number of safeguard actions is also in part due to the preparations currently underway for Russia's accession to the WTO, which requires the enactment of WTO compatible safeguard, AD and anti-subsidy legislation. The Commission has been involved in the finalisation of Russia's new law on Trade Defence, which will be applicable upon Russia's WTO accession.

4. CHINA

Since China joined the WTO in December 2001, DG Trade has followed all Chinese trade defence cases closely in order to ensure that they meet the relevant WTO rules.

During 2003, 4 AD investigations were opened by China on products originating either in the EC as a whole or in one or more of its Member States. This compares with 2 AD investigations opened against imports from the EC in 2002.

At the end of 2003, a total of 4 AD measures were in force against imports from the Community compared to 1 at the end of 2002. There were no safeguard or CVD measures in place on imports from the EC.

On the Chinese approach to AD cases, it is probably too early to say whether or not systemic problems exist given that, so far, only one case concerning the EU has been opened after WTO accession. While there were certain problems identified, it remains to be seen if China will take on board our concerns in forthcoming cases.

5. LATIN AMERICA

During 2003, Latin American countries opened 1 new AD case (Brazil) and imposed 2 new AD measures (Brazil and the Andean Community). Also, 2 new CVD investigations were opened in the same period (by Mexico and Venezuela) and 4 new safeguard investigations initiated (by Ecuador), with 1 new CVD measure (Peru) and 1 new safeguard measure imposed (Ecuador).

Activity, by traditional users such as Argentina, Brazil and Venezuela, at least as regards actions directed at Community exports, seems to remain stable. As regards Argentina, this can be explained by the important events of the last two years, i.e. changes in domestic macroeconomic policy and the currency devaluation, elements which have raised new barriers to imports.

However, countries such as Peru and Ecuador are emerging as new and/or frequent users of trade defence instruments, notably of safeguards.

6. AUSTRALIA

At the end of 2003, Australia had a total of 7 trade defence measures in force against imports from the Community. The majority of these take the form of AD duties (4), while 3 are CVD measures. During the year 2003, Australia opened 1 AD investigation and 1 CVD investigation and imposed 1 AD measure. This compares to no measures imposed in 2002. Furthermore, in 2003 Australia terminated 4 investigations (3 AD, 1 CVD) initiated in previous years without the imposition of any measures.

Australia is one of the "old" users of trade defence instruments, and has often targeted community agricultural aid schemes.

PART IV: CONCLUSION

Concrete results obtained

Year 2003 has seen several positive results for EC exporters targeted in third country proceedings (see list below). A number of very important cases have been terminated without the imposition of measures while in other cases measures have been withdrawn. This shows that active and direct involvement by the Commission can have a significant impact on the outcome of TDI proceedings launched by third countries.

The Commission is constantly improving its working relations with third countries, since it gives more room for mutual understanding and for finding solutions acceptable to all parties concerned, as for instance in the investigation regarding EU exports of olive oil to Australia.

The following key cases deserve to be mentioned (please see the relevant country section in the report for further details):

- Withdrawal of the **US steel safeguard** action, trade affected: 900 million euros
- Compliance by the US with the WTO ruling on the so-called "**privatization case**" (DS-212), trade affected: 300 million euros
- Withdrawal of the Chinese safeguard measures on **steel**, trade affected: 200 million euros
- Termination of the Indian AD investigation on **X-Ray baggage inspection multi-energy systems** from EU, trade affected: 20 million euros
- Termination of the Russian safeguard investigation on imports of **wallpaper,** trade affected: 112 million euros
- Exclusion of EC exporters from the Russian safeguard measure on **ball-bearings**, trade affected: 10,6 million euros
- Termination of the Mexican AD investigation on imports of **ceramic tiles** from Spain, trade affected: 48 million euros

– Termination of the Australian AD investigation on imports of **olive oil** from Italy and Spain and anti-subsidy investigation on the same product from Italy, Greece and Spain, trade affected: 60 million euros

Another positive achievement in 2003 has been the improvement of co-ordination with Member States on third country measures. In March 2003, the Commission had in-depth discussions with Member States (Commercial Questions Group) on how it deals with third country measures. This has, inter alia, lead to the identification of direct contact persons within the national administration of each Member State, to ensure that DG Trade can rapidly communicate information. As of 1 May, this Member State "hotline" has been extended to include the new EU members.